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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA**

Chambered Group USA, LLC,

Petitioner,

VS.

Kristina Babcock, Director of Industry Operations for the ATF's Phoenix Field Division,

Respondent.

**PETITION FOR DE NOVO
REVIEW OF THE REVOCATION
OF A FEDERAL FIREARMS
LICENSE PURSUANT TO 18 U.S.C.
§ 923(f)(3)**

1. This Petition is brought by Chambered Group USA, LLC (“Chambered Group”), seeking a de novo review of a Final Notice of Denial of Application, Revocation, Suspension and/or Fine of Firearms License issued by the Bureau of Alcohol, Tobacco, Firearms and Explosives (“ATF”) on July 11, 2023 (“Final Notice of Revocation”) revoking its federal firearms license (“FFL”). To the extent that any of the transactions identified in the Final Notice of Revocation even constitute violations of the Gun Control Act (“GCA”), such violations were not willful, and the ATF was therefore not authorized to issue the Final Notice of Revocation.

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PARTIES

2. Petitioner Chambered Group holds a type 07 FFL, No. 9-86-013-07-4A-07852, for its premises located at 15605 West Roosevelt Street, Suite 113, Goodyear, AZ 85338.

3. Respondent, Kristina Babcock, is the Director of Industry Operations (“DIO”) for the ATF’s Phoenix Field Division, located at 40 North Central Avenue, Suite 1000, Phoenix, AZ 85004.

JURISDICTION

4. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1331 and 18 U.S.C. § 923(f)(3), which authorizes de novo review of the Final Notice of Revocation.

5. Chambered Group has exhausted all of its administrative remedies pursuant to 18 U.S.C. § 923(f)(2) and 27 C.F.R. § 478.74, et al.

BACKGROUND OF CHAMBERED GROUP

6. Chambered Group has continuously held a type 07 (Dealer in Firearms Other Than Destructive Devices) FFL since 2014.

7. The owners of Chambered Group at the time it obtained its FFL were Jay Fern, Cole Kelly, and John Fillman, and they were the initial responsible persons on Chambered Group's FFL.

8. Around August of 2018, John Lamontagne purchased Cole Kelly's and John Fillman's shares in Chambered Group as an investment, thereby becoming the majority shareholder.

9. John Lamontagne was not an employee of Chambered Group, and was not involved in the management and policies of Chambered Group related to firearms, or otherwise regularly involved in the operation of its business.

10. Based solely on his majority ownership interest as an investor in Chambered Group, John Lamontagne was added to its FFL as a responsible person as required by law.

11. The ATF conducted its first compliance inspection of Chambered Group in 2018, which resulted in a report of violations, which was closed without any further administration action, such as a warning letter being issued, or a warning conference being held.

1 12. The ATF conducted a second compliance inspection of Chambered Group in
2 2019, which resulted in a report of violations, which was closed by a warning conference
3 between Mr. Fern and an ATF Area Supervisor.

4 13. The ATF conducted a third compliance inspection of Chambered Group in 2021.

5 14. Chambered Group had significantly improved since its 2019 inspection, as a result
6 of which the ATF issued a report of violations, which was closed without any further
7 administrative action.

8 15. The ATF conducted a fourth compliance inspection of Chambered Group
9 beginning on April 11, 2022, which covered a standard one-year period, from April 11, 2021
10 through April 11, 2022.

11 16. Part of the period covered by this compliance inspection was during the
12 coronavirus pandemic, during which demand for firearms was significantly increased.

13 17. Due to the increased demand for firearms caused by the coronavirus pandemic,
14 Chambered Group transferred significantly more firearms than in prior years, without any
15 increase in staffing.

16 18. During the period from April 11, 2021 through April 11, 2022 covered by this
17 inspection, Chambered Group completed 1,930 Form 4473s (the Firearms Transaction Record
18 that must be completed when transferring a firearm to someone who does not have an FFL), and
19 transferred 2,113 firearms.

20 19. The ATF issued a Report of Violations on April 25, 2022.

21 20. Based on the April 25, 2022 Report of Violations, Respondent issued a Notice to
22 Revoke or Suspend License and/or Impose a Civil Fine on December 14, 2022 (“Notice to
23 Revoke”).

24 21. In response to the Notice to Revoke, Chambered Group timely requested a hearing
25 pursuant to 18 U.S.C. § 923(f)(2) and 27 C.F.R. § 478.74.

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CURRENT ATF FFL REVOCATION HEARINGS BASED ON THE BIDEN ADMINISTRATION'S ZERO TOLERANCE POLICY DO NOT COMPORT WITH DUE PROCESS REQUIREMENTS

22. The ATF originally had an independent hearing officer preside over an administrative hearing requested in response to a notice to revoke an FFL pursuant to 18 U.S.C. § 923(f)(2) and 27 C.F.R. § 478.74.

23. As explained in ATF “Hearing Procedures Relating to Federal Firearms Licensees” (2010R-2T), 75 Fed. Reg. 48632, at 48365, a hearing officer would be chosen to preside over the hearing and then issue a report containing findings of fact and conclusions of law, and a recommended disposition.

24. In order to ensure that the licensee received a fair hearing in accordance with its right to due process, prior to assigning a hearing officer, the Chief of the ATF's Firearms and Explosives Services Division was required to "consider whether there is reasonable cause to believe that the hearing officer's ability to conduct a fair and impartial inquiry is impaired by the hearing officer's prior knowledge of the case or interactions with the applicant/licensee." *Id.* at 48363. In order to "ensure impartiality, the hearing officer will generally be appointed from outside the applicant's/licensee's division . . ." *Id.*

25. Having an independent hearing officer was important to protect a licensee's due process rights because FFL revocation hearings are not subject to the protections provided by the Administrative Procedures Act, 5 U.S.C. §§ 551-59 ("APA"), because the decision is subject to de novo review in federal court.

26. The ATF subsequently eliminated its use of independent hearing officers and the DIO who issued the initial notice to revoke an FFL now serves as the hearing officer. *See* ATF Final Rule “Federal Firearms License Proceedings—Hearings,” 99 Fed. Reg. 32230, at 32231.

27. Pursuant to 28 U.S.C. § 923(e), the ATF is only authorized to revoke an FFL based on a willful violation of the GCA.

28. The limitation on the ATF's authority to revoke an FFL was added to the GCA by the Firearm Owners Protection Act, 100 Stat. 449, Pub. Law 99-308, ("FOPA") based on the

1 concern of Congress that the ATF had been improperly revoking FFLs based on unintentional
2 violations of the GCA.

3 29. The FOPA and the GCA do not define the term “willful” as it relates to a violation
4 of the GCA.

5 30. The U.S. Court of Appeals for the Ninth Circuit has held that a “mere mistake or
6 negligence” is not sufficient to revoke an FFL. *General Store, Inc. v. Van Loan*, 560 F.3d 920,
7 923 (9th Cir. 2009).

8 31. An FFL holder’s violation of the GCA only rises to the required level of a willful
9 violation when it either knowingly fails to follow the requirements of the law, or was plainly
10 indifferent to or recklessly disregarded the requirements of the law, each of which require a
11 showing of “conscious indifference to the consequences of an act.” *General Store*, 560 F.3d at
12 923-24 (citation and emphasis omitted).

13 32. The ATF has the discretion to not revoke an FFL even if it determines that a
14 licensee willfully violated the GCA. 18 U.S.C. § 923(e).

15 33. On June 23, 2021, the Biden Administration announced a “zero tolerance” policy,
16 pursuant to which:

17 ATF will seek to revoke the licenses of dealers the first time that they
18 violate federal law by willfully 1) transferring a firearm to a prohibited
19 person, 2) failing to run a required background check, 3) falsifying records,
20 such as a firearms transaction form, 4) failing to respond to an ATF tracing
request, or 5) refusing to permit ATF to conduct an inspection in violation
of the law.

21 [https://www.whitehouse.gov/briefing-room/statements-releases/2021/06/23/fact-sheet-
22 biden-harris-administration-announces-comprehensive-strategy-to-prevent-and-
23 respond-to-gun-crime-and-ensure-public-safety/](https://www.whitehouse.gov/briefing-room/statements-releases/2021/06/23/fact-sheet-biden-harris-administration-announces-comprehensive-strategy-to-prevent-and-respond-to-gun-crime-and-ensure-public-safety/)

24 34. Although the “zero tolerance” policy uses the term “willfully,” in actuality, it
25 treats any of the five specified violations as automatically having been committed willfully.

26 35. On January 28, 2022, the ATF issued Order 5370.1E5, entitled “Federal Firearms
27 Administrative Policy and Procedures.”

28 36. Section 7(e)(2) of Order 5370.1E5 states that the “ATF will revoke a federal

1 firearms license, absent extraordinary circumstances on initial violations, if those violations
 2 inherently demonstrate willfulness, such as . . . failing to run a background check prior to
 3 transferring a firearm to a non-licensee" (Emphasis added).

4 37. In addition to inherently deeming certain violations to have been willfully
 5 violated, Section 7(e)(4) states that the:

6 ATF can establish the knowledge element of willfulness in several ways:

7 (a) Establish the FFL has a history of similar, repeat violations, and
 8 documentation that an IOI [Industry Operations Investigator] discussed
 9 them with the FFL. The FFL's compliance history can include other efforts
 by ATF (including qualification inspections) to inform the FFL about its
 legal responsibilities.

10 (b) Use inspection reports to establish willfulness even if the inspection
 11 found no violations (i.e., acknowledgement of Federal firearms
 regulations).

12 (c) Statements or admissions communicated by the FFL or its employee(s),
 13 as well as actions by the FFL or its employee(s) during an inspection that
 14 demonstrate knowledge of regulations and concurrence with the IOI's
 findings.

15 (d) Publications and information provided to the FFL which explain the
 16 FFL's legal responsibilities.

17 (e) Demonstrate that the FFL has complied with the specific regulation on
 other occasions.

18 (f) Demonstrate that the FFL has substantial experience as an FFL.

19 38. The above does not come close to establishing that a violation was willfully
 20 committed as such term is used in the Ninth Circuit, but rather establishes strict liability,
 21 pursuant to which the mere existence of an error results in it being considered to have been
 22 willfully committed.

23 39. The lack of the protections afforded to licensees during an FFL revocation hearing
 24 is allegedly justified on the basis that a decision revoking an FFL is subject to de novo review
 25 in U.S. district court within sixty days of a decision revoking an FFL. *See* 5 U.S.C. § 554(a)(1);
 26 18 U.S.C. § 923(f)(3); ATF Final Rule "Federal Firearms License Proceedings—Hearings," 99
 27 Fed. Reg. at 32233.

28 40. A licensee's right to due process is violated if it is unable to secure de novo judicial

1 review of a final decision revoking its FFL before the revocation becomes effective and prevents
 2 the licensee from continuing its business.

3 **EVIDENCE PRESENTED DURING THE APRIL 13, 2023 REVOCATION
 4 HEARING**

5 41. A revocation hearing was held on April 13, 2023, at the ATF's Phoenix Field
 6 Division in Phoenix, Arizona.

7 42. Although Respondent had issued the Notice to Revoke setting forth the grounds
 8 on which the ATF sought to revoke Chambered Group's FFL for alleged willful violations of
 9 the GCA, Respondent also served as the hearing officer for the April 13, 2023 revocation
 10 hearing.

11 43. Stated differently, Respondent brought the charges against Chambered Group, and
 12 then served as the hearing officer to determine whether she had been correct in bringing such
 13 charges.

14 44. Industry Operations Investigator ("IOI") Terri Garzda was the ATF's sole witness
 15 during the April 13, 2023 revocation hearing.

16 45. IOI Garzda testified that Chambered Group had no issues related to responding to
 17 trace requests, or reporting multiple sales, and that there was no information suggesting that
 18 Chambered Group's business practices contributed to the diversion of firearms to criminals.

19 46. IOI Garzda further testified that there were no concerns that Chambered Group
 20 was selling to straw purchasers, or firearms traffickers.

21 47. Based on her inspection of Chambered Group, IOI Garzda concluded that it did
 22 not appear that Chambered Group had intentionally made any of the errors cited in the April 25,
 23 2022 report of violations, and that she believed that Chambered Group is willing and able to be
 24 compliant with requirements of the GCA.

25 48. Jayson Fern was Chambered Group's sole witness during the April 13, 2023
 26 revocation hearing.

27 49. In addition to testifying why none of the violations cited in the April 25, 2022
 28 Report of Violations had been willfully committed, he testified regarding substantial changes

1 that Chambered Group had made to its business to prevent such violations from occurring in the
2 future.

3 50. Among other things, Chambered Group has adopted electronic 4473 form
4 software, a firearms transaction checklist, and retained a regulatory compliance specialist to do
5 a full audit of its procedures.

6 51. Chambered Group also submitted a compliance action plan, pursuant to which it
7 agreed to allow the ATF to conduct as many compliance inspections as it wanted over a year
8 long period to ensure that such procedures were properly working. Absent such an agreement,
9 the ATF is only permitted to conduct one compliance inspection in a twelve month period. 18
10 U.S.C. § 923(g)(1)(B)(ii); 27 C.F.R. § 478.23(b)(2)(i).

11 52. On July 11, 2023, Respondent issued the Final Notice of Revocation that is the
12 subject of this petition for de novo review.

13 53. In the Final Notice of Revocation, Respondent determined that Chambered
14 Group's FFL was subject to revocation on the basis that it had willfully violated three categories
15 of regulations adopted by the ATF pursuant to the GCA: (1) 27 C.F.R. § 478.102; (2) 27 C.F.R.
16 §§ 478.123(b) & 478.123(a); and (3) 27 C.F.R. §§ 478.124(c)(1), 478.21(a), &
17 478.124(c)(3)(iv).

18 54. The first violation relates to a transfer of a firearm to a customer less than three
19 full business days after receiving a response of delayed from the National Instant Criminal
20 Background Check System (“NICS”).

21 55. Chambered Group conducted a background check to transfer a firearm to a
22 customer on Saturday, April 17, 2021, and received a response of delayed from NICS.

23 56. Pursuant to the GCA, Chambered Group was required to wait three full business
24 days, or until Thursday, April 22, 2021, to transfer the firearm to the customer, unless the
25 response from NICS changed to a proceed or denied before that time.

26 57. During the April 13, 2023 hearing, Mr. Fern testified that pursuant to Chambered
27 Group's policies and procedures, the customer would not have been called to pick up the firearm
28 until after the full three business day waiting period had expired, unless the delayed response

1 changed to a proceed in the interim.

2 58. There is no evidence to dispute that the NICS check ultimately resulted in a
3 proceed result for this customer.

4 59. There was no first-hand account of when the transfer occurred with relation to the
5 NICS proceed result. The Form 4473 shows that the firearm was transferred on April 20, 2021,
6 and Chambered Group presented evidence that its policy was to not contact a customer to pick
7 up a firearm for which an initial response of delayed was received from NICS, unless it changed
8 to a proceed, or the full three business day waiting period had expired.

9 60. Based on the above, it is more probable than not that the results of the customer's
10 NICS check changed to a proceed before the firearm was transferred on April 20, 2021, even
11 though there is a mark by the box stating "No response was provided within 3 business days."

12 61. Alternatively, if the firearm was transferred before the NICS response was
13 changed to proceed, Mr. Fern testified that the error was due to a simple miscalculation of the
14 waiting period by counting calendar days instead of business days.

15 62. Chambered Group employs military veterans, including the disabled veteran who
16 made this transfer. This employee lost part of his stomach and lower intestine in service of his
17 country and occasionally struggles with pain when his medication refills are delayed.

18 63. There is no evidence that this employee had ever miscalculated the time for the
19 waiting period on any other occasion.

20 64. Additionally, the transfer was made during the time when the country was in the
21 coronavirus pandemic, when demand for firearms was high and workers were stretched.

22 65. Under these circumstances the facts show that if the transfer occurred before
23 Chambered Group received a proceed from NICS, it was due to an inadvertent miscalculation
24 of the waiting period, and the Ninth Circuit has held that a mere mistake does not constitute
25 willfulness.

26 66. Despite the above, based on the potential that the employee that transferred the
27 firearm may have miscalculated the waiting period, Respondent concluded that Chambered
28 Group willfully violated the GCA because it was aware that this employee had medical issues

1 that may have contributed to the violation – to the extent that the NICS check had not changed
 2 to a proceed before the transfer.

3 67. The second category of violations relates to twelve firearms for which the
 4 acquisition and/or disposition was not timely and/or accurately recorded in its acquisition and
 5 disposition (“A&D) records in violation of 27 C.F.R. §§ 478.123(b) & 478.123(a).

6 68. The acquisitions/dispositions of those firearms that had not been recorded at the
 7 time of the 2022 compliance inspection were all reconciled, and all errors in the entries were
 8 corrected, prior to the issuance of the April 25, 2022 Report of Violations.

9 69. Based on the fact that it had transferred 2,113 firearms during the period covered
 10 by the compliance inspection, and only had twelve errors identified in its A&D records,
 11 Chambered Group had properly and correctly completed the entries in its A&D records 99.43%
 12 of the time.

13 70. Nevertheless, Respondent concluded that these violations were willfully
 14 committed because Chambered Group was “aware of process and recordation issues and failed
 15 to implement additional measures to prevent these violations from occurring.”

16 71. This incorrectly imposed a strict liability standard – i.e., the violations occurred,
 17 therefore they were willful.

18 72. The third and final category of violations relates to twenty-four Form 4473s, in
 19 which the responses to a total of forty-six of the items were blank, incomplete, or incorrect in
 20 violation of 27 C.F.R. §§ 478.124(c)(1), 478.21(a), & 478.124(c)(3)(iv).

21 73. During the period covered by the compliance inspection, Chambered Group had
 22 completed 1,930 Form 4473s, and had errors on only twenty-four of them, meaning that 98.76%
 23 of the Form 4473s completed by Chambered Group had no errors.

24 74. None of the transferees/buyers on the Form 4473s with errors were persons
 25 prohibited by the GCA from purchasing or possessing firearms.

26 75. The errors on twenty of the twenty-four Form 4473s were corrected prior to the
 27 April 13, 2023 revocation hearing.

28 76. One of the Form 4473s cited in the third category of violations related to a

1 customer who had completed a Form 4473 on October 8, 2021 and allegedly left item No. 21.k.,
 2 which asks “Are you an alien **illegally or unlawfully** in the United States?,” blank.

3 77. The customer who had completed that form had indicated in response to other
 4 items on the Form 4473 that he was born in Phoenix, Arizona, was a citizen of the United States,
 5 and had never renounced his U.S. citizenship, and had, in fact, marked the “no” box in response
 6 to item No. 21.k.

7 78. Despite the fact that there was not even a violation related to item No. 21.k. on the
 8 October 8, 2021 Form 4473, Respondent concluded that Chambered Group had willfully
 9 committed the non-existent violation. Final Notice of Revocation, Findings of Fact ¶ 3.d and
 10 Conclusions of Law ¶¶ 9, 11 & 14. With regard to those forms that actually contained errors,
 11 Respondent concluded that they were willfully committed simply because Chambered Group
 12 had errors on Form 4473s during prior compliance inspections, and still had errors.

13 79. Respondent’s decision imposed a strict liability standard that is akin to an
 14 argument that if you have had a typographical error in a court document in the past, and you
 15 have one again in the future, such error was willfully committed. It does not account for the fact
 16 that humans make mistakes, and the Ninth Circuit has held that “mere mistakes” do not
 17 constitute willfulness.

18 80. Chambered Group did not willfully violate the GCA in connection with any of the
 19 three categories of violations identified in the Final Notice of Revocation.

20 81. Based on the evidence presented during the April 13, 2023 revocation hearing,
 21 there is no factual support for the ATF’s conclusion that Chambered Group willfully violated
 22 the GCA, as opposed to having made mere mistakes with regard to the completion of certain
 23 entries in its A&D records and Form 4473s, which, at most, amounted to negligence.

24 82. Upon information and belief, Respondent revoked Chambered Group’s FFL
 25 pursuant to the requirements set forth in Section 7(e) of ATF Order 5370.1E5 because of the
 26 transfer of a firearm to a customer on April 20, 2021, three days after having submitted a
 27 background check to NICS, but less than three full business days.

28 83. Pursuant to the Biden Administration’s zero tolerance program, Respondent

1 revoked Chambered Group's FFL, not based on any willful violations of the GCA, but rather
 2 pursuant to a strict liability policy, pursuant to which if a licensee had a prior violation, a
 3 subsequent violation is automatically considered to be willful.

4 **REQUEST FOR STAY OF THE EFFECTIVE DATE
 5 OF THE FINAL NOTICE OF REVOCATION**

6 84. Chambered Group received a copy of the Final Notice of Revocation on July 17,
 7 2023. The Final Notice states that it is effective fifteen days after receipt, or August 1, 2023.

8 85. Chambered Group's personal representative, who had appeared on its behalf
 9 during the April 13, 2023 revocation hearing, requested an extension of the revocation date of
 10 Chambered Group's FFL.

11 86. In a letter dated July 26, 2023, Respondent agreed to extend the effective date of
 12 Chambered Group's FFL until October 1, 2023, but with the condition that it "not manufacture
 13 or acquire any firearms for the business after the date of the original revocation (August 01,
 14 2023)."

15 87. After being retained, counsel for Chambered Group advised Respondent of its
 16 intention to file this petition for de novo review of the Final Notice of Revocation and requested
 17 that the effective date of the revocation of its FFL (including the ability to continue to
 18 manufacture and acquire firearms) be postponed until the completion of these judicial
 19 proceedings as authorized by 28 U.S.C. § 478.78.

20 88. Respondent advised that she would not agree to extend the effective date of the
 21 revocation of Chambered Group's FFL to allow it to continue conducting its regular business
 22 while it pursues a petition for de novo review pursuant to 18 U.S.C. § 923(f)(3). No explanation
 23 for the refusal was provided, despite the fact Chambered Group has been conducting business
 24 for almost a year and a half since the violations upon which its FFL is being revoked are alleged
 25 to have been committed, and regulations specifically authorize such a stay.

26 89. Chambered Group did not willfully violate the GCA or regulations issued
 27 thereunder and therefore Respondent was not authorized to revoke its FFL.

28 90. Respondent's refusal to allow Chambered Group to continue to operate its

1 business as an FFL while its petition for a de novo review of the Final Notice of Revocation is
2 a deprivation of its right to due process.

3 91. In order to prevent its business from being closed before being afforded the
4 required due process through de novo judicial review of the Final Notice of Revocation, the
5 effective date of the revocation of Chambered Group's FFL must be stayed pending completion
6 of this action.

7 WHEREFORE, Chambered Group respectfully prays that this Honorable Court:

- 8 (A) reverse the Final Notice of Revocation and hold that Respondent was not
9 authorized to revoke its FFL pursuant to 18 U.S.C. § 923(e);
- 10 (B) Stay the effective date of the revocation of its FFL so that it can continue
11 to conduct its business, including manufacturing and acquiring firearms, while this
12 case is pending; and
- 13 (C) grant such other relief as it deems just and proper.

14 DATED this 1st day of September, 2023.

15 **BOWMAN AND BROOKE LLP**

16 By: /s/ Amanda E. Heitz
17 Amanda E. Heitz

18 and

19 **RENZULLI LAW FIRM, LLP**

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